

ISSUE DATE: February 4, 1999

DOCKET NO. P-421/C-98-786

ORDER GRANTING RELIEF, REQUIRING APPLICATION OF WHOLESALE DISCOUNT
TO PAL SERVICE, AND LIMITING SERVICE TO PAYPHONE PROVIDERS TO PAL
SERVICE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayer
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Formal Complaint by the
Members of the Minnesota Independent
Payphone Association and Choicetel, Inc.
Against U S WEST Communications, Inc.
Regarding Unbundling the Network Elements
of Automatic Number Identification

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PROCEDURAL HISTORY

On June 9, 1998 the members of the Minnesota Independent Payphone Association (MIPA) and Choicetel, Inc., a competitive local exchange carrier, filed a complaint claiming that U S WEST Communications, Inc. was violating a Commission Order by refusing to unbundle the network elements making up Automatic Number Identification service.¹ The Complaint requested the following relief:

- (1) an Order requiring U S WEST to unbundle and offer on a tariffed basis ANI ii 70, a code identifying a phone line as a payphone line; and
- (2) an Order requiring U S WEST to refund to MIPA members and Choicetel the difference between their rates following unbundling and the rates they are currently paying; or
- (3) in the alternative, an Order requiring U S WEST to offer Public Access Line service, a service which includes ANI ii 70, for resale at the wholesale discount set by the Commission in arbitration proceedings under the federal Telecommunications Act of 1996, 47 U.S.C. § 252.

¹ The Order cited was In the Matter of a Formal Complaint of the Members of MIPA Against U S WEST Communications, Inc., Docket No. P-421/C-95-1036, ORDER REQUIRING PROVISION OF 1FB TO COCOT PROVIDERS FOR RESALE AND THE RETENTION AND UNBUNDLING OF PAL (November 27, 1996).

On July 6, 1998 the Commission issued an Order requiring U S WEST to answer the Complaint.

On July 17, 1998 U S WEST filed an answer to the complaint and a motion to dismiss, claiming the United States Congress, acting through the Federal Communications Commission (FCC), has preempted any state action to require the unbundling of ANI ii 70.

On July 25, 1998 complainants filed a reply disputing U S WEST's claims and claiming that the unbundling requested would improve 911 service to persons using payphones.

On September 18, 1998 the Department of Public Service filed comments recommending that the Commission order U S WEST to unbundle ANI ii 70 service.

On the same date the Metropolitan 911 Board filed comments asking the Commission, in connection with any relief granted in this case, to require U S WEST to transmit a code identifying payphones as payphones to 911 operators.

On October 30 and November 5, 1998 U S WEST filed final comments. On November 16 and 17, 1998 complainants and the Metropolitan 911 Board, respectively, filed final comments.

On January 12, 1999 the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Factual Background

In November of 1996 the Commission issued the Order MIPA claims U S WEST is violating. That Order required U S WEST to do two things: (1) to permit independent payphone providers to buy one-party flat-rate business service (1 FB service) for use in providing public payphone service, and (2) to unbundle and offer at tariffed rates the constituent elements of Public Access Line (PAL) service, the comprehensive payphone service which includes everything from a single-party line to the screening, identification, and blocking codes necessary for billing, collection, and fraud prevention in payphone service.²

Prior to the November 1996 Order, PAL service had been the only U S WEST service independent payphone providers could legally use to provide public payphone service. MIPA sought the right to use 1 FB service, which could be combined with payphone-specific service elements provided by the payphone owner, U S WEST, or another vendor. For most payphone providers, using PAL service was substantially more expensive than using 1 FB service, even with the cost of purchasing payphone-specific service elements separately.

In the November 1996 Order the Commission found that the state local competition statute and the

² In the Matter of a Formal Complaint of the Members of MIPA Against U S WEST Communications, Inc., Docket No. P-421/C-95-1036, ORDER REQUIRING PROVISION OF 1FB TO COCOT PROVIDERS FOR RESALE AND THE RETENTION AND UNBUNDLING OF PAL (November 27, 1996).

federal Telecommunications Act of 1996 prohibited U S WEST from refusing to permit resale of its one-party flat-rate business service and from refusing to unbundle the components of PAL service. Minn. Stat. § 237.121; 47 U.S.C. § 251.

Following the November 1996 Order, most payphone providers in U S WEST's service area converted from PAL service to 1 FB service, often buying one or more unbundled PAL service elements from U S WEST. U S WEST reduced the price of PAL service to compete with 1 FB, but 1 FB continued to hold a slight price advantage because, unlike PAL, it could be purchased from resellers at a discount. It therefore remained the dominant payphone service.

In March 1998 the landscape changed, when the FCC adopted a nation-wide compensation plan to promote competition in the payphone industry.³ The FCC plan established a uniform code -- ANI ii 70 -- to identify payphones to interexchange carriers when customers accessed the carriers through a payphone with a credit card. These calls were becoming a major source of payphone revenue, and it was important to standardize compensation procedures.

The FCC held that, unless the payphone transmitted the ANI ii 70 code, the interexchange carrier need not compensate the payphone owner for the call. To expedite and simplify compliance with the Order, the FCC also appeared, at least, to prohibit local exchange carriers from providing the ANI ii 70 code to any customer other than a payphone provider taking tariffed payphone service. For U S WEST, the only qualifying service is PAL.

II. The Issues and Positions of the Parties

MIPA claims the November 1996 Order requires U S WEST to unbundle ANI ii 70, as a component of PAL, and to offer it at tariffed rates. MIPA does not read the FCC Order as preempting that action and argues that such a reading conflicts with the intent of both the FCC Order and the Commission's November 1996 Order. In the alternative, MIPA states that requiring U S WEST to offer PAL for resale to competitive carriers at the wholesale discount (21.5%) applicable to other retail services would be equally appropriate relief.

The Metropolitan 911 Board reports that it considers 911 service to metropolitan payphone locations seriously degraded by the use of 1 FB lines for payphone service. Payphones using 1 FB service do not transmit PAL's payphone identification code and therefore appear as business locations in 911 data banks. This can cause confusion about the location of the emergency to which police, firefighters, or emergency medical personnel are dispatched.

U S WEST claims the Commission is preempted from unbundling ANI 70 ii and cannot require the Company to offer PAL at the wholesale discount because it is not a retail service and is already being offered at a wholesale rate. The Company states it wishes to work with the Metropolitan 911 Board to assure the most effective 911 service possible, but that operational constraints make it impossible to improve payphone identification for 1 FB lines.

³ Memorandum Opinion and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket 96-128, DA 98-481 (March 9, 1998).

The Department of Public Service argues that the Commission is not preempted from unbundling ANI ii 70 and may require the Company to offer PAL at the wholesale discount.

III. Commission Action

A. Summary of Commission Action

The Commission finds that it is contrary to the public interest to continue the unbundling of PAL service mandated in the November 1996 Order. The Commission will not only not require the unbundling and tariffing of ANI ii 70, it will require U S WEST to move all independent payphone customers to PAL service within 90 days. This decision makes it unnecessary to reach the preemption issue raised by U S WEST.

The Commission also finds that PAL service is a retail service subject to resale at the wholesale discount under the Telecommunications Act of 1996. The Commission will direct U S WEST to make the service available at wholesale to authorized local resellers immediately.

These actions are explained below.

B. Independent Payphone Providers Buying Service from U S WEST Must Buy PAL Service

The Metropolitan 911 Board has made a clear, compelling, and unrefuted showing that permitting the provision of public payphone service through the use of U S WEST's one-party flat-rate business lines (1 FB lines) jeopardizes the public safety.

When emergencies are reported from payphones using 1 FB lines, no payphone code appears to the 911 dispatcher. This means that police officers, firefighters, and emergency medical technicians dispatched in response do not always know that the call came from a payphone and may lose critical minutes trying to find the caller or the emergency reported. Even worse, if the 911 caller fails to give an address, emergency personnel may be dispatched to the wrong address altogether, since the address on the 1 FB line may be the payphone provider's business address, not the location of the payphone.

None of these problems occur with PAL-equipped payphones, which transmit a "payphone" code and their exact location to the 911 dispatcher.

The Commission accepts and concurs with the judgment of the 911 Board that this situation is unacceptable. The Commission also accepts U S WEST's judgment that operational constraints make it impossible for the Company to ensure that 1 FB lines used for payphone service transmit all the information emergency dispatchers need. The only available remedy is to limit independent payphone providers using U S WEST's service to PAL service, and the Commission will so order.

C. PAL Service Must Be Offered at the Wholesale Discount

The federal Telecommunications Act of 1996 requires incumbent local exchange carriers "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to

subscribers who are not telecommunications carriers. . .” 47 U.S.C. § 251 (c) (4) (A). Complainants asked for alternative relief in the form of an Order requiring U S WEST to offer PAL service at the 21.5% wholesale discount applicable to 1 FB service in the Choicetel/ U S WEST interconnection agreement.

U S WEST opposed that course of action, arguing that PAL is not a retail service but a wholesale service and is already being offered at wholesale rates. The Company also argued that the Commission has approved negotiated interconnection agreements classifying PAL as exempt from the resale requirements of the Act.

While the Company is correct that the Commission has approved parties’ negotiated agreements exempting PAL from resale at the wholesale discount, the Commission itself has not found that the Act requires such treatment. In fact, when the Commission has faced the issue directly with other companies, it has found that PAL is a retail service subject to resale at the wholesale rate. In the first and most complex GTE arbitration proceeding, for example, the Commission found as follows:

GTE claimed its COCOT [customer owned coin operated telephone] rates were already wholesale rates which it should not be required to discount further. The Commission agrees with the ALJ that GTE must offer these rates at the wholesale discount.

The Act imposes a two-part test for services incumbent LECs must offer at wholesale. The incumbent LEC must “offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. . .” 47 U.S.C. § 251 (c) (4) (A).

First, COCOT services are clearly provided at retail, meeting the first prong of the statutory test. The independent pay phone provider does not resell the service it buys from GTE; it uses that service to put together a retail service of its own. COCOT services are no more wholesale services than equipment sales to independent pay phone providers are wholesale transactions. In both cases vendors are providing at retail the building blocks of another retail service.

Second, COCOT subscribers are not telecommunications carriers under 47 U.S.C. § 153 (44) - (46), but aggregators under 47 U.S.C. § 226 (a) (2). COCOT services therefore meet both prongs of the statutory test and must be offered at wholesale rates to CLECs [competitive local exchange carriers].

In the Matter of AT&T Communications of the Midwest, Inc.’s Petition for Arbitration with Contel of Minnesota, Inc. d/b/a GTE Minnesota under Section 252(b) of the Federal Telecommunications Act of 1996, Docket No. P-442,407/M-96-939, ORDER RESOLVING ARBITRATION ISSUES AND OPENING COST PROCEEDING (December 12, 1996) at 14.

This decision was upheld on reconsideration, when the Commission found that the largely deregulated status of payphones made no difference:

The Commission affirms its December 12 Order for the reasons given therein. Whatever the regulatory status of these services, they are services provided at retail to subscribers who are not telecommunications carriers, making them subject to the Act's resale requirements. 47 U.S.C. § 251 (c) (4) (A). The Act contains no exception for deregulated services.

**ORDER RESOLVING ISSUES AFTER RECONSIDERATION AND
APPROVING INTERCONNECTION AGREEMENT (March 14, 1997) at 10.**

The Commission made the same findings in the later Sprint/GTE arbitration proceeding. In the Matter of Sprint Communications Company L.P.'s (Sprint's) Petition for Arbitration of with Contel of Minnesota, Inc. d/b/a/ GTE Minnesota (GTE) Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996, Docket No. P-407,466/M-96-1111, ORDER RESOLVING ARBITRATION ISSUES (January 21, 1997) at 11.

For the same reasons, the Commission will require U S WEST to offer PAL service to authorized resellers at the same wholesale discount applicable to one-party flat-rate business service. U S WEST's PAL service, like the COCOT services of other carriers, is a telecommunications service provided at retail to subscribers who are not telecommunications carriers. Like the COCOT services of other carriers, it must therefore be offered for resale at the wholesale discount.

D. Conclusion

The public safety requires ending the practice of permitting independent payphone providers to provide public payphone service using U S WEST's one-party flat-rate business service. The Telecommunications Act of 1996 requires that U S WEST offer PAL service to authorized resellers at the wholesale discount.

The Commission will so order.

ORDER

1. Within 90 days of the date of this Order U S WEST Communications, Inc. shall stop providing 1 FB service to independent payphone providers planning to use it to provide public payphone service and shall restrict customers buying service for that purpose to PAL service. U S WEST shall work with independent payphone providers to prevent service disruptions and to minimize any confusion and inconvenience resulting from the change.
2. U S WEST Communications, Inc. shall begin offering PAL service for resale at the wholesale discount forthwith.
3. U S WEST Communications, Inc. shall make a filing demonstrating compliance with the terms of this Order promptly upon compliance.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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